

**STATE OF WASHINGTON  
DEPARTMENT OF FINANCIAL INSTITUTIONS  
SECURITIES DIVISION**

IN THE MATTER OF DETERMINING  
whether there has been a violation of the  
Securities Act of Washington by:

JOHN A. ERICKSON,  
  
Respondent.

S-03-083-03-SC01

STATEMENT OF CHARGES AND NOTICE  
OF INTENT TO ENTER AN ORDER TO  
SUSPEND REGISTRATIONS AND IMPOSE  
FINES

Case No. S-03-083

THE STATE OF WASHINGTON TO:

John A. Erickson, CRD #834150  
6263 N. Scottsdale Rd.  
Scottsdale, AZ 85250

**STATEMENT OF CHARGES**

Please take notice that the Securities Administrator of the State of Washington has reason to believe that the Respondent, John A. Erickson, has violated the Securities Act of Washington. The Securities Administrator believes those violations justify the entry of an order suspending John A. Erickson's securities salesperson registration and investment adviser representative registration and imposing fines pursuant to RCW 21.20.110(1). The Securities Administrator finds as follows:

**TENTATIVE FINDINGS OF FACT**

**RESPONDENT**

1. John A. Erickson ("Erickson") is a securities salesperson and investment adviser representative with Morgan Stanley DW, Inc. ("MSDW").<sup>1</sup> He is currently registered as a securities salesperson with the Washington State Securities Division and as been continuously so registered since

1 1977. He has been registered with the Washington State Securities Division as an investment adviser  
2 representative since December 1, 1991. Since August 1991, Erickson has been employed by MSDW.  
3 From March 1989 to August 1991, Erickson was employed by Prudential Securities Incorporated as a  
4 securities salesperson. Prior to that, Erickson was employed as a securities salesperson for Dean Witter  
5 Reynolds, Inc. from October 1978 to March 1989, and with Merrill Lynch, Pierce, Fenner & Smith, Inc.  
6 from October 1976 to October 1978. Erickson currently resides in Arizona.

### 7 **NATURE OF RESPONDENT'S CONDUCT**

8 2. Florence T.<sup>2</sup> ("Florence"), a Washington resident, is a retired seventy-four year old widow.  
9 Her husband passed away in May of 1999. Florence was a professional musician and part-time music  
10 teacher prior to retirement.

11 3. Until 1992, Florence and her husband's investment experience was limited to having a  
12 saving account and purchasing certificates of deposit. They sold a piece of property in 1992 for  
13 approximately \$200,000, and wanted to invest the proceeds utilizing the services of a brokerage firm. A  
14 neighbor referred Florence and her husband to Dean Witter. At that time, they opened an account at  
15 Dean Witter and continued to hold an account there for several years with Erickson acting as their  
16 financial advisor.

17 4. Florence and her husband were conservative investors. Their investment objective was to  
18 supplement their income during their retirement years. This continued to be Florence's investment  
19 objective at the time of her husband's death, at which point her account consisted of money market  
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21 <sup>1</sup> MSDW was formed in May 1997 with the merger of Morgan Stanley Group Inc. and Dean, Witter, Discover & Co. ("Dean Witter").

22 <sup>2</sup> The person's full name is omitted for the purposes of privacy protection.

1 funds, investment-grade corporate bonds, and an annuity. Florence had no interest in purchasing  
2 investments that were long-term, illiquid, or that would expose her investment capital to heightened  
3 market risk.

4 5. Florence's annual income, approximately \$16,000 per year, consisted of a monthly Social  
5 Security benefit and a small monthly withdrawal from an IRA. Due to her husband's death, Florence's  
6 need for income was greater as she was no longer receiving his monthly pension benefits. Her liquid net  
7 worth at this time was approximately \$293,000. This included approximately \$250,000 in her MSDW  
8 account, a savings account that held approximately \$37,000, and an IRA account containing  
9 approximately \$6,300. Florence also owned a non-liquid asset, her mobile home worth approximately  
10 \$100,000.

11 6. Beginning in late 1999 and continuing until early 2000, Erickson recommended that  
12 Florence purchase several MSDW Reset Performance Equity-Linked Redemption Quarterly-Pay  
13 Securities ("Reset PERQS").

14 7. Reset PERQS are mandatorily exchangeable medium-term debt securities of MSDW. Their  
15 return on investment is ultimately linked to the performance of a company's common stock, but the  
16 investor in Reset PERQS does not own common stock at the time of purchase. The Reset PERQS do  
17 however provide a yield to the investor in the form of a fixed quarterly payment. The quarterly payment  
18 is calculated by multiplying a fixed percentage, for e.g., 6%, by the issue price of each Reset PERQS.<sup>3</sup>  
19 Unlike traditional debt instruments, Reset PERQS do not pay a fixed amount of cash principal at  
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maturity. Instead, Reset PERQS pay a number of shares of the underlying common stock at maturity based on the performance of the underlying common stock. Reset PERQS are not redeemable prior to maturity.<sup>4</sup> At maturity, each Reset PERQS is converted into shares of the underlying common stock at the “exchange ratio.” The exchange ratio is not constant and varies for each Reset PERQS depending on the underlying common stock. Historically, the exchange ratio has been as great as one-half of a share to as low as one-fifth of a share. The Reset PERQS were listed and traded on the American Stock Exchange.

8. Among the risk factors included in each Reset PERQS prospectus is the fact that there is no guaranteed return of principal. The value of the underlying Common Stock received by the investor at maturity may be less than the principal amount of the Reset PERQS.

9. Upon the recommendation of Erickson, Florence purchased the following Reset PERQS:

- a. On or about October 18, 1999, 500 MSDW/Oracle Corporation Reset PERQS were purchased for \$11,859.38. MSDW/Oracle Corporation Reset PERQS paid 6% quarterly, matured on December 15, 2001, and had an exchange ratio of one-half of a share of Oracle Corporation stock. Florence’s MSDW/Oracle Corporation Reset PERQS were sold at Erickson’s recommendation on or about January 3, 2000, for an approximate gain of \$1,358.06.

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<sup>3</sup> Historically, the issue price of each Reset PERQ has been substantially lower than the stock price of the underlying equity to which the debt instrument is linked. For example, the issue price for each MSDW/Oracle Reset PERQ was \$23.71875. \$23.71875 was one-half of the closing price of Oracle common stock on October 31, 1999, the date that MSDW offered the MSDW/Oracle Reset PERQS for initial sale to the public.

<sup>4</sup> However, in the event that the market price of the equity to which the debt is linked falls below \$4.00 per share, then the maturity date is deemed “accelerated” to that date. This event took place with MSDW/JDS Uniphase Corporation PERQS because the stock price of JDS Uniphase Corporation fell below \$4.00 per share. See *infra* paragraph 9d.

- b. On or about February 18, 2000, 1200 additional MSDW/Oracle Corporation Reset PERQS were purchased for \$32,114.23. Florence's MSDW/Oracle Corporation Reset PERQS were sold at Erickson's recommendation on or about June 30, 2000, for an approximate loss of \$915.27.
- c. On or about May 15, 2000 and May 23, 2000, 1000 MSDW/Home Depot, Inc. Reset PERQS were purchased for \$13,875. MSDW/Home Depot, Inc. Reset PERQS paid 6% quarterly, matured on May 30, 2002, and had an exchange ratio of one-quarter of a share of Home Depot, Inc. stock. Florence's MSDW/Home Depot, Inc. Reset PERQS were sold at Erickson's recommendation on or about August 29, 2000, for an approximate loss of \$2,000.40.
- d. On or about June 12 and June 30, 2000, 1400 MSDW/JDS Uniphase Corporation Reset PERQS were purchased for \$32,430. MSDW/JDS Uniphase Corporation Reset PERQS paid 10% quarterly, matured on June 28, 2002, and had an exchange ratio of one-fifth of a share of JDS Uniphase Corporation stock. On or about May 6, 2002, trading on all MSDW/JDS Uniphase Corporation Reset PERQS was suspended and the notes were called by MSDW for redemption. Florence's MSDW/JDS Uniphase Corporation Reset PERQS were tendered by MSDW for 280 shares of JDS Uniphase Corporation on or about May 7, 2002. At that point in time, JDS Uniphase Corporation was trading for approximately \$3.51 and the 280 shares were worth \$982.50. Florence eventually sold

her shares in October of 2002, and sustained an approximate loss of \$31,972.75.<sup>5</sup>

e. On August 29, 2000, 400 MSDW/Yahoo! Inc. Reset PERQS were purchased for \$11,175. MSDW/Yahoo Reset PERQS paid 8% quarterly, matured on October 30, 2002, and had an exchange ratio of one-fifth of a share of Yahoo! Inc. stock. Florence's MSDW/Yahoo! Inc. Reset PERQS were sold at Erickson's recommendation on March 20, 2001, for an approximate loss of \$8,631.09.

10. Erickson did not explain the Reset PERQS product to Florence prior to these purchases, nor did Florence understand the product. Florence did not understand that the convertible nature of the investment and believed she owned the underlying equity at the time of purchase. Florence did not follow the stock market and relied upon Erickson's recommendations. She was uncomfortable with the investments because she had never heard of companies such as Oracle Corporation and JDS Uniphase Corporation. Erickson reassured her as to the strength of the companies linked to the Reset PERQS.

11. Florence realized a collective approximate loss of \$42,161.45 as a result of Erickson's recommendations to purchase Reset PERQS. This loss was only slightly offset by the quarterly payments she received while she still held Reset PERQS. Over a period of a year and a half, these quarterly payments totaled approximately \$7,843.86.

12. A memorandum dated January 27, 1999 was sent to all MSDW branch managers and financial advisors from the Compliance Department entitled "General Guidelines for the Offer and Sale of Underwritten Equity-Linked Securities." This memorandum discusses guidelines to follow when

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<sup>5</sup> This loss was calculated using the date of her initial purchase of the MSDW/JDS Uniphase Corporation Reset PERQS and the subsequent date on which the JDS Uniphase Corporation shares were sold.

1 offering Reset PERQS to clients. These guidelines state in part that, “to help the client achieve portfolio  
2 diversification, it is recommended that the Equity-Linked Securities purchase not exceed 10% of the  
3 client’s liquid net worth.” By August 29, 2000, approximately 15% of Florence’s liquid net worth was  
4 associated with her investments in Reset PERQS.

5 13. In April of 2001, at Florence’s request her account was transferred to another MSDW  
6 financial advisor.

7 14. On or about August 5, 2003, MSDW offered to pay Florence approximately \$35,000 as  
8 compensation her losses related to the Reset PERQS sold to her. Florence accepted the offer.

9 15. At least two other customers of MSDW have filed arbitration claims naming John A.  
10 Erickson. Both claims relate to the sale of Reset PERQS. As to one of the claims, New York Stock  
11 Exchange Docket No. 2002-011072, an arbitration hearing is pending. The other claim, NASD Docket  
12 No. 02-07076, was settled for \$9,999. Neither claimant is a Washington state resident.

13 Based upon the above Tentative Findings of Fact, the following Conclusions of Law are made:

14 **CONCLUSIONS OF LAW**

15 1. The offer and/or sale of the investments described above constitutes the offer and/or sale of  
16 a security as defined in RCW 21.20.005(10) and (12).

17 2. John A. Erickson, as described above, has willfully violated RCW 21.20.702 by  
18 recommending the purchase and sale of securities to Florence T. without reasonable grounds to believe  
19 that the transactions were suitable for her. Such practice is grounds for the suspension of his salesperson  
20 registration and for the imposition of fines pursuant to RCW 21.20.110(1).

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Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that the securities salesperson registration and investment adviser representative registrations of Respondent John A. Erickson be suspended for a period of 30 days.

## NOTICE OF INTENT TO IMPOSE FINES

Pursuant to RCW 21.20.110(1), and based upon the above Tentative Findings of Fact and Conclusions of Law, the Securities Administrator intends to order that Respondent John A. Erickson shall be liable for and pay a fine in an amount not to exceed \$10,000.

## AUTHORITY AND PROCEDURE


This Order is entered pursuant to the provisions of RCW 21.20.110, and is subject to the provisions of RCW 21.20.120 and Chapter 34.05 RCW. The Respondent may make a written request for a hearing as set forth in the NOTICE OF OPPORTUNITY TO DEFEND AND OPPORTUNITY FOR HEARING accompanying this Order. If the Respondent does not request a hearing, the Securities Administrator intends to adopt the foregoing Tentative Findings of Fact and Conclusions of Law as final, and enter a permanent order against the Respondent suspending registrations and imposing fines, as described above.

DATED this 13 day of October, 2003.


*Deborah R Bortner*  
DEBORAH R. BORTNER  
Securities Administrator

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Approved by:

  
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Michael E. Stevenson  
Chief of Enforcement

Presented by:

  
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Chad C. Standifer  
Staff Attorney